

DRAFT Minutes of the
Delta Protection Commission Meeting
November 20, 2003

1. Call to Order/Roll Call

Chairman McCarty called the meeting to order at 6:30 p.m.

Present: Chairman McCarty, Vice Chairman Ferguson, Commissioners Beltran, Calone, Curtis, Johnson, Kelly, Sanders, Shaffer, Sturm, and Wilson.

Absent: Commissioners Cabaldon, Coglianese, Forney, Glover, McGowan, Nottoli, Ornellas, and van Loben Sels.

2. Public Comments

There were no public comments.

3. Minutes of the Last Meeting

Commissioner Kelly asked that typos be corrected on pages six and nine of the minutes. Commissioner Shaffer moved approval of the minutes with changes; Commissioner Wilson seconded. The minutes were approved by voice vote. Commissioner Beltran abstained.

4. Chairman's Report

Chairman McCarty welcomed Kirk Sturm to the Commission. Commissioner Sturm is the Parks and Recreation representative who replaced former Commissioner Ron Brean. Chairman McCarty also congratulated Commissioner Cabaldon who was re-elected as Mayor of the City of West Sacramento.

The December 18, 2003 Agriculture Committee was canceled and rescheduled for January 29, 2004 from 2-4 p.m.

The next meeting of the Delta Protection Commission is scheduled for Thursday, January 22, 2004.

5. Commissioner Comments/Announcements

Commissioner Curtis announced that recent legislation replaced the Striper Stamp with the Delta Enhancement Stamp; however, there will be a discussion of the geographic area in which a person fishing would be required to have the stamp. The Fish and Game Commission would heard the issue at its December 3-5, 2003 meeting, and Commissioner Curtis encouraged everyone who wanted to provide input to attend.

Commissioner Shaffer announced that A.G. Kawamura is the new Secretary for the California Department of Food and Agriculture (CDFA).

6. Attorney General's Report

Christine Sproul said she swore in one new [Sturm] and two re-appointed [Shaffer and Kelly] members to the Commission.

She announced that the California Farm Bureau Federation filed a lawsuit against the CALFED program, challenging the EIR/EIS as not including alternatives that fully consider actions which could reduce the impacts on agricultural land and water. The lawsuit also faults the EIR/EIS for not considering the direct/indirect impacts for agricultural lands and cumulative impacts of agricultural lands conversions to other uses which might flow from CALFED program. It asserts that the environmental restoration projects were separated improperly from the broader consideration of CALFED and cites that as a violation of the National Environmental Policy Act. Ms. Sproul said this lawsuit is similar to a lawsuit the Office of the Attorney General (OAG) defended in state court—which is presently on appeal. The new lawsuit names many of the federal and state participating agencies of CALFED, in addition to Margit Aramburu in her capacity as Executive Director of the Delta Protection Commission. The lawsuit is a revision of a previously filed lawsuit the State was named in but was dismissed; however the appellate court sent it back to federal district court in Fresno and Farm Bureau plaintiffs filed an amended version of the lawsuit. Ms. Sproul said the OAG will have a status conference on the matter in January 2004. She said she expected this case to be resolved within the next year.

7. Executive Director's Report

Ms. Aramburu reported on several items:

- 2004 Delta Protection Commission Meeting Schedule;
- November Newsletter;
- Materials from the Senate Select Committee on Delta Resources and Development Hearing on November 12, 2003;
- Stockton Record Newspaper Articles: *Environmental Examinations; Closed Door Meeting Addresses Future of 700-Acre Site; Ex Lawmaker Raps Delta Encroachment; Keeping Watch on the Delta;*
- Pending Projects Memo
- Letter from the City of Stockton announcing the city's proposal to update its general plan which includes portions of all four islands which are located in the Primary Zone. Ms. Aramburu stated the Commission wrote a letter to the City of Stockton advising them that if they incorporate the four areas into the city limits the land uses would have to be consistent with the Commission's General Plan and Act. She further stated that former Senator Patrick Johnston was concerned about the annexation and wrote a series of letters. The City of Stockton has since removed the four islands from its study area. However, it is proposing a greenbelt between the Cities of Lodi and Stockton to be part of the City of Stockton's overall planning.

Ms. Aramburu stated that Commission staff is involved in the Sacramento River Waterfront planning group to looking at the Yolo and Sacramento counties to develop consistent guidelines for development in/on the river.

Ms. Aramburu spoke at a tour of the Delta for the Water Education Foundation and attended a reception for Resources Secretary Mary Nichols who left office November 14, 2003.

Ms. Aramburu attended an Ecosystem Restoration Grant Amendments meeting and commented on the proposed amendments being considered, and attended a Working Landscapes meeting where they are working on the Payment in Lieu of Taxes (PILT) issue and mitigation for loss of agricultural land and other issues.

8. CALFED Activities and Projects

Ron Ott, California-Bay Delta Authority (CBDA), provided the Commission with an update on activities to date.

The CBDA and Bay Delta Public Advisory Committee (BDPAC) had a joint meeting on December 11, 2003 to discuss the CVP/SWP Integration Projects; Delta Improvements; Southern California Regional highlights; ROD targets and Regional Profiles Finance Plan; and, WUE, Science ERP, Drinking Water and Groundwater Grants Programs.

CALFED Delta Planning: Staff is working on the regional program profiles with DWR. Saracino, Kirby and Snow is the contractor who will be working with Ms. Aramburu to start gathering the information to produce a plan.

Ecosystem Restoration: The ERP Science Board met November 19, 2003 to develop a process for vetting all ERP Delta actions. The Board came up with a process and will be testing the process on projects in the Delta, and will present the information to the Science Board meeting in January 2004.

Integrated Operations: Bay-Delta agencies continue to discuss options for integrating CVP/SWP operations. This is one of several objectives laid out in the Bay-Delta Program's August 2000 Record of Decision, which also includes development of a long-term Environmental Water Account, long-term contract renewals, South Delta improvements, development of the Operations Criteria and Plan (OCAP) and biological opinions for the projects. The package will be subject to public review and comment between December 2003 and June 2004. A panel discussed some of the proposed actions at a December 11, 2003 CBDA meeting.

CALSIM Review: A science review of the California Water Resources Simulation Model was conducted November 13-14 in Sacramento. Commissioner Kelly gave a presentation. The Bay-Delta Science Program commissioned an external review of the model to provide an independent analysis as well as constructive criticism of its strengths and weaknesses. CALSIM is used for planning and management of the State Water Project and the federal Central Valley Project, and plays a key role in many management and policy decisions.

South Delta Fish Facility: The South Delta Fish Facilities Forum was held on November 3rd. Recommendations were made for proposals for South Delta Hydrodynamic/Fisheries Investigation; collection, handling, transportation, and release; South Delta Fish Facility Improvements; Clifton Court Forebay Diversion Facility Location options; alternative fish

facility concepts using non-salvage screens and flow recirculation; and fish facility technology development

In-Delta Storage: Because of a delay in releasing the In-Delta Storage Feasibility Study Executive Summary and the Economics Report, the 30-day public comment period has not started. Additionally, dates for the two public workshops have not been rescheduled.

Finance: CBDA convened an independent review panel on November 18 to receive input on financing the different programs. All recommendations were to be presented at the CBDA December 11, 2003 meeting.

Ms. Aramburu asked if the finance considerations would include regional implementation strategies. Mr. Ott answered that it would not be looking at regional implementation at the present time because the focus was on the different programs to see what they have laid out for future projects.

9. Consider Sending a Letter to CALFED Bay Delta Public Advisory Committee Suggesting that One Member Represent Recreation Interests

The BDPAC has 30 members that represent multiple and specific interests. Ms. Aramburu stated that in June 2003, the Recreational Boaters of California sent a letter to BDPAC supporting the appointment of a recreational boater/advocate to the BDPAC; however none of the names submitted were selected when BDPAC made its final decision. The Commission's Recreation Citizens Advisory Committee (RCAC) drafted a letter for Commission signoff asking BDPAC to appoint a recreational person to sit on its committee. Ms. Aramburu said that Commissioners Coglianese and Cabaldon, both of whom sit on BDPAC, commented that they and most of the members on BDPAC do represent multiple interests including recreation.. Ms. Aramburu also stated that Commissioners Coglianese and Cabaldon said the Commission must think about if they want the person to represent Delta interests only, or recreational interests as a whole.

Commissioner Johnson commented that since the inception of CALFED the boating community has been very disappointed that there is no boating representation on CALFED, considering the fact that many of the CALFED projects can have a positive or negative impact on recreational boating. He further stated the Department of Boating and Waterways strongly supported sending the letter but asked what where the parameters of the "solution area". Ms. Aramburu responded by saying the CBDA solution areas were basically all the watersheds that drained into the Delta.

Commissioner Kelly suggested that the Commission ask BDPAC to consider including a recreation subcommittee to address water supply and recreation. This could also drive development of an overall strategy for recreation.

Commissioner Curtis suggested the Commission take the position of a broad recreational representative instead of a Delta-centered representative.

The Chairman opened the public hearing; there were no public comments.

It was moved by Commissioner Shaffer to send a letter to the BDPAC suggesting that one member represent broad recreation interests. The motion was seconded by Commissioner Kelly and passed unanimously by the members present, incorporating the suggestions made by DPC staff and Commissioners.

10. Consider Accepting Staff Research/Report on Implementation of the CALFED Ecosystem Restoration Program in the Delta

Ms. Aramburu stated that staff prepared an Ecosystem Restoration Improvements summary memo comparing CALFED funded ecosystem restoration projects against the overall ecosystem restoration goals. Presently, Delta specific ecosystem restoration under preparation by DFG (Bay Delta Branch), would not be available for some time. The memo has been circulated to CALFED staff for accuracy. Since this was an informational item, Ms. Aramburu asked that the Commission review the report and direct staff to update the report as needed. Chairman McCarty suggested that the item be added to the Commission website, since it will be a routine report.

The Chairman opened the public hearing; there were no public comments.

Commissioners Sanders asked that Chairman McCarty accept the report rather than have a vote of the Commission.

Commissioner Curtis suggested that DPC staff contact the Nature Conservancy (Staten Island) and US Fish and Wildlife Services (Stone Lakes) staff to allow them the opportunity to provide input.

11. Briefing on the Senate Hearing on the Delta Protection Commission

Chairman McCarty briefed the Commission on the November 12, 2003 meeting of the Senate Select Committee on Delta Resources and Development, regarding the future of the Delta Protection Commission.

Chairman McCarty said that Senator Michael Machado suggested the Commission submit its ideas about its future, including ideas on funding, membership, protection of the Primary Zone, and issues associated with the Secondary Zone. He said that he and Commissioner Coglianese met to review the outcomes of the Senate Hearing and agreed on the following issues: (1) there is substantial support for the Commission; (2) the Commission has done a good job with the resources it has in meeting its mission; (3) the Commission has not been aggressive enough and should be proactive, particularly in preserving the primary zone; (4) the Commission's "toolbox" is not large enough to implement its current mission; (5) development in the Secondary Zone is a threat to the Primary Zone; (6) the Commission should develop more information on the impacts to the resources in the primary zone; (7) the Commission should continue to develop ways to protect the Primary Zone with the "least regulation needed"; and (8) the Commission should expand its outreach to Delta stakeholders, including but not limited to holding a State of the Delta Conference and/or developing an Index of Indicators on Delta health. Chairman McCarty asked for comments from the Commission to formulate specific and refined recommendations to adopt at the January meeting to give to Senator Machado and Assemblymember Lois Wolk.

Commissioner Wilson asked if any one at the hearing asked for the Commission to be eliminated; Chairman McCarty said no. Commissioner Wilson suggested the Commission keep City spheres of influence out of the Delta Primary Zone. Vice Chair Ferguson agreed and suggested the Plan be so amended. Commissioner Wilson suggested this be adopted as a policy, rather than as a Plan amendment. Ms Aramburu said she would consult with counsel as to the appropriate approach.

Commissioner Calone stated that one of the problems the Commission has is that it learns about projects well after fact and he felt that any project in the Primary Zone should be brought before the Commission before any action is taken. He said that to be effective the Commission must be in the position to add its comments during and not after the planning stage—especially if the project involves the buying and selling of property where the buyer plans to change the historical use of the property.

Chairman McCarty stated that he felt Patrick Wright's comments at the hearing were appropriate. Mr. Wright was critical of the Commission for not being responsive to CALFED's needs. Chairman McCarty further stated that in some cases, the Commission frustrates progress rather than participates in the programs. He said that to protect, preserve, and enhance the Delta, the Commission should refine its Resource Management Plan so that it reflects specific actions, identified needs, tasks completed, and goals to be met.

Commissioner Calone commented the Commission needs to be consulted on projects at the start of the planning process, rather than asked to review projects at the end of the planning process when the Commission can just say yes or no.

Commissioner Wilson asked how the Commission can comment early on acquisitions when those negotiations are not public; Chairman McCarty said updating and amending the Plan to be more specific would provide better early direction for new projects.

Commissioner Beltran asked what the process was for notification of properties up for sale in the Primary and Secondary Zones. He said he felt that once the Commission was noticed then it could track the project properly. Ms. Aramburu stated that currently there is no process for public notification of properties for sale, because many of the negotiations between the selling/buying entities are private transactions at the request of the seller. Additionally, because the sellers are private landowners, agencies must respect the interest of the private property owner. She said the Commission has been very vigilant in pursuing the matter of "knowing first" of any projects that would affect land use in the Delta. She also said the process is changing because agencies, to the best of their abilities, are trying to work with the Commission by notifying it of projects taking place in the Primary and Secondary Zones.

Commission Beltran suggested the State should required review and approval by the Commission prior to granting public funds for acquisitions and/or projects in the Delta. Chairman McCarty noted that acquisitions are opportunistic and noted that actions should be consistent with the Commission's Plan.

Commissioner Ferguson said that the Resource Management Plan should have a multi-pronged approach; first by notifying people of issues the Commission is looking at in the Delta, and second, by having Commission serve as a gatekeeper, signing-off on any buying/selling negotiations before escrow closes. Chairman McCarty noted there is currently an exception to title referencing State Lands Commission and a similar exception regarding the Commission could be added to escrow documents.

Commissioner Curtis said he agreed with Chairman McCarty's comments that the Commission should refine its Plan and that he was not opposed to the Legislature giving the Commission more teeth, but the Commission should recognize the progress it has made. He said the Commission has made comments on acquisitions that delineated what the Commission's position on acquisitions and land management to protect Delta resources.

Vice Chair Ferguson suggested the Agriculture Committee could review proposed projects in the Secondary Zone to determine if they would adversely impacts resources in the Primary Zone, and to suggest solutions such as buffer or greenbelts between the Primary Zone and urban development.

Commissioner Wilson agreed the Commission should review expenditure of public funds in the Delta Primary Zone.

Commissioner Curtis said the Commission's recommendation to have an open process for development of Management Plans on public property and to have land maintained in its current land use until the process is completed should be adopted in its Plan as a basis for land acquisition in the Delta. He said the Department of Fish and Game will be focusing on restoring the lands it already owns until the Delta Resources Ecosystem Restoration Implementation Plan is completed. He said he would support the Legislature giving more authority to the Commission and for an update of the Commission's Plan.

Commissioner Shaffer suggested that the Commission be proactive but also push the envelope further in directing an open planning process. He said the Commission should work with the CBDA and its implementing agencies in developing an MOU that would spell out a process to address and reduce conflict between the Record of Decision, Delta Ecosystem Restoration Implementation Plan, and the Commission's Plan.

Commissioner Wilson suggested that habitat restoration should be appropriately located on an island to protect ongoing agriculture on nearby lands.

Chairman McCarty said the Plan should be specific in the areas of wildlife habitat, agriculture, and recreation and, be flexible enough to provide for the growth and pressures the Delta will face in the future. He went on to say that the Commission's Plan allows for alternatives; however those alternatives should be "out front" by five to ten years in order for the Commission to be pro-active.

Commissioner Shaffer suggested that the Commission develop Best Management Practices in its Resource Management Plan to improve its compatibility with the environment, and farmer friendly wildlife.

Chairman McCarty noted that additional work would require additional funding for the Commission.

Commissioner Curtis suggested the Commission request additional funding to update the Plan.

Commissioner Wilson said the Commission should study the need to retain the boundary between the Primary Zone and the Secondary Zone.

Chairman McCarty reminded the Commission of Commissioner Forney's caution against moving the "line in the peat". He said the line is a powerful tool and the Commission should not do anything to weaken this tool but use it in a more creative/substantive way to address issues in the Secondary Zone that will impact the Primary Zone.

Commissioner Wilson said the Commission may want to recommend elimination of the Secondary Zone, and expand the Commission jurisdiction over the entire Legal Delta.

Chairman McCarty said the Secondary Zone was included to provide "elasticity" for the urban areas and to avoid conflict. He said the Commission should refer to the Delta as the "Legal Delta" that has zones within it, so as not to be confused by arbitrary lines drawn in and around the Delta. He said there were too many lines describing the Delta; the Commission should clarify the boundaries.

Commissioner Shaffer said the original legislation anticipated expansion of the cities around the Delta and said the Commission could suggest actions to protect the edge such as compact development and ag buffers between the urban areas and the Primary Zone. He said the Commission needs to address outside impacts on the resources of the Primary Zone.

Chairman McCarty said the Commission may have been too lax about projects in the Secondary Zone and their impacts on the Primary Zone and said the Commission could be more proactive, particularly through an update of the Plan.

Ms. Aramburu suggested actions the Commission could take without Legislation:

- Develop indicators of the overall health of the Delta;
- Conduct a Delta Agricultural Meeting/Summit with land trusts to discuss what is being done on the fringe of the Delta that is protecting the Primary Zone, to look for tools and mitigation strategies to incorporate into the Delta buffer;
- Provide outreach and get involvement from other groups and establish a Delta -- a list of the non-profits on various topic areas for additional outreach and input;
- Conduct a joint meeting with the Reclamation Board to talk about flood control and levee issues that affect the entire legal Delta;

- Take an oppose position at a public meeting about a Sphere of Influence expanding into the Primary Zone;
- Establish an MOU between State Agencies and the Commission;
- Provide guidance on acquisition and restoration; and
- Talk about what is happening on the edge of the Primary Zone (urban areas, areas slated for growth, areas in agriculture, and protected areas).

Ms. Aramburu said the Commission has had a slow start on its Agriculture Study with the American Farmland Trust because of staff downsizing and leaves of absence. She said she will meet with staff from Washington in early December to either get the study going or go in another direction. Additionally, funding from the Department of Boating and Waterways for the Recreation Study has been held up because Commission staff is being asked to provide additional information.

Chairman McCarty opened the public hearing.

Jeff Hart, Hart Restoration and Nurseries thanked the Commission for the opportunity to educate himself on Delta Issues. Mr. Hart said there are a lot of people who live in and love the Delta but found it disheartening that more people are not involved in Commission meetings. He said he and Ms. Aramburu discussed having an alliance to coordinate and get people involved in Delta issues and suggested the Commission secure funding from CALFED to help organize an event or series of events to involve more public participation within the Delta. Ms. Aramburu added that Mr. Ron Ott, CALFED has agreed to help put together any outreach forums.

Commissioner Wilson suggested starting to agendize these actions at the next meeting.

Chairman McCarty closed the public hearing.

He directed staff to formulate specific and refined recommendations to adopt at the January meeting to forward to Senator Machado and Assemblymember Lois Wolk.

12. Briefing on Central Valley Project-State Water Integration Proposal

Commissioner Kelly briefed the Commission on the status of projects planned for the Delta, and the Napa Proposal. The proposal was developed by DWR, US Bureau of Reclamation (USBR) and CVP/SWP contractors for improved integration of the CVP and SWP projects for existing operations and new facilities included in the CALFED Record of Decision. State and federal agencies have been coordinating the project schedules to develop a package of actions to increase water supply reliability, improve delta water quality, and improve conditions for Delta fish.

Commissioner Kelly stated the proposal is consistent with CALFED goals for Delta Conveyance because it restores water project reliability and flexibility; allows the EWA to transfer and store water; allows a reliable water transfer market to function; allows SWP facilities to convey larger amounts of water during periods of high quality water in the Delta

to improve water quality for urban use; and provides greater capability for SWP facilities to be used to improve the reliability for CVP supplies for water users and wildlife refuges.

She said that because the different groups were not getting along as well as they should, it affected key decisions relating to South Delta Improvement Program (SDIP) and the overall description of CVP/SWP operations needed to get a comprehensive biological opinion on the projects operations. Commissioner Kelly said the group expects the SDIP public draft EIR/EIS to be published in January 2004 with public meetings in February 2004, biological opinions on Operations Criteria and Plans during June and July 2004, and finally, the SDIP Record of Decision in August 2004.

13. Environmental Justice Policy

Ms. Aramburu explained that a new state law requires all boards, commissions, departments, and agencies to adopt an Environmental Justice Policy. The policy stipulates that public policy be based on mutual respect and justice for all people free from any form of discrimination or bias and that the Commission is already a leader in the area by providing only public forums for discussion and decision making. The Commission has drafted an Environmental Justice Policy based on a policy from the Resources Agency; however, it has received written comments from Mr. Ken McGhee, Environmental Justice Policy Coordinator of CBDA.

Mr. McGhee suggested that the Commission incorporate bilingual/multilingual translation of the policy, work collaboratively on Environmental Justice Policy efforts with other state agencies, and make sure the policy applies to any Native American Tribes within the Commission's jurisdiction.

Commissioner Sanders said that the State Lands Commission adopted its Environmental Justice Policy in April 2002 as an interim policy and modified it based on additional circulation and consultation with 51 Environmental Justice organizations throughout the State. He suggested the Commission use a two-step process by first adopting an interim policy to take additional time with outreach efforts before secondly, bringing the matter back to the Commission for final adoption. He also said the State Lands Commission has incorporated an annual review of their policy to allow for adjustments.

Commissioner Kelly asked if adopting multilingual translation of a draft policy would create an additional workload on the Commission staff. Ms. Aramburu said that staff would be more than able to accommodate the changes suggested by Mr. McGhee.

Ms. Sproul explained that the focus of the policy is to make sure that Agencies adopt policies do not have disparate adverse impacts on minority populations.

Chairman McCarty said he felt there would not be a significant amount of additional workload other than a heightened sensitivity in performing duties.

Commissioner Sanders cited an example where the State Lands Commission (SLC) implemented its Environmental Justice Policy through the execution of the California

Environmental Quality Act. He said the SLC completed an Environmental Impact Report (EIR) on a 70 mile linear pipeline moving from the city of Concord through the city of West Sacramento. The EIR contained the first Environmental Justice Policy analysis of the impact of a project of those surrounding the right-of-way. He said he agreed with Chairman McCarty in that a major benefit of the Environmental Justice Policy would be a heightened sensitivity and would help increase the involvement of minorities and low-income populations.

Chairman McCarty said he would like to see a draft policy for six months—bringing the issue back to the Commission with any changes—then adopting the final policy.

Commissioner Beltran asked Ms. Aramburu if there was a state clearinghouse for translation services of Commission materials. Ms. Aramburu stated that there is no such service.

Commissioner Johnson asked if the policy must be adopted through OAL regulations. Ms. Sproul assured him that the Environmental Justice Policy was a general policy to govern the Commission's outreach efforts and did not need to be adopted as a regulation.

The Chairman opened the public hearing; there were no public comments.

Commissioner Wilson moved that the Commission adopt an interim Environmental Justice Policy for a period of six months to invite comments and then adopt a final Environmental Justice Policy. Commissioner Shaffer suggested the motion be amended to incorporate the suggested changes from Mr. McGhee. The motion was seconded by Commissioner Curtis and passed unanimously by the members present with the suggested changes.

14. ADJOURNMENT

Chairman McCarty adjourned the meeting at 9:15 p.m.